

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ARLY "DENVER" BOSH, EMEL BOSH, and their minor child,

Plaintiffs,

V.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. C19-5616 BHS

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation ("R&R")

of the Honorable Theresa L. Fricke, United States Magistrate Judge, Dkt. 14, and

Plaintiffs Arly and Emel Bosh's ("Boshs") objections to the R&R. Dkt. 15.

On September 12, 2019, Judge Fricke issued the R&R recommending that the

Court dismiss the Boshs' complaint because it is barred by the doctrine of *Eres v. United*

¹States, 340 U.S. 135, 146 (1950), which determined that "the Government is not liable

under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out

of or are in the course of activity incident to service.” On September 10, 2010, the Bosphorus

filed objections. Dkt. 15. On October 1, 2010, the Government responded. Dkt. 16.

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

5 In this case, the Boshs' objections are without legal merit. It is true that many
6 people, including Supreme Court justices, have questioned the *Feres* decision. See, e.g.,
7 *United States v. Johnson*, 481 U.S. 681, 700 (Scalia, J., dissenting) ("*Feres* was wrongly
8 decided and heartily deserves the widespread, almost universal criticism it has received.")
9 *Feres*, however, is the law of the land, and the Court declines any invitation to depart
10 from binding precedent. Therefore, the Court having considered the R&R, the Boshs'
11 objections, and the remaining record, does hereby find and order as follows:

- (1) The R&R is **ADOPTED**;
 - (2) The Government's motion to dismiss, Dkt. 5, is **GRANTED**;
 - (3) The Boshs' claims are **DISMISSED with prejudice**; and
 - (4) The Clerk shall terminate all pending motions, enter a **JUDGMENT** in favor of the Government, and close the case.

Dated this 11th day of December, 2019.


BENJAMIN H. SETTLE
United States District Judge